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Order 95-9-27



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

**SERVED SEP 25 1995**

Issued by the Department of Transportation  
on the 25th day of September, 1995

Joint Application of

**DELTA AIR LINES, INC.**  
**SWISSAIR, SWISS AIR TRANSPORT**  
**COMPANY, LTD.**  
**SABENA S.A., SABENA BELGIAN WORLD**  
**AIRLINES, and**  
**AUSTRIAN AIRLINES, ÖSTERREICHISCHE**  
**LUFTVERKEHRS AG**

Docket OST-95-618 - 6

for approval of and Antitrust Immunity for  
Alliance Agreements pursuant to 49 U.S.C. §§  
41308 and 41309

**ORDER**

**Summary**

Delta Air Lines, Inc., Swissair, Swiss Air Transport Company, Ltd., Sabena S.A., Sabena Belgian World Airlines, and **Austrian Airlines, Österreichische Luftverkehrs AG** filed a joint application for approval and antitrust immunity for certain Commercial Cooperation and Marketing Agreements. We are requiring additional information to facilitate our review of the application and are deferring the otherwise applicable 21 day comment deadline until further notice. When we have determined that the record of this case is complete, we **will** announce an appropriate procedural schedule for reaching a decision expeditiously.

**Application**

On September 8, 1995, Delta Air Lines, Inc. ("Delta"), Swissair, Swiss Air Transport Company, Ltd. ("Swissair"), Sabena S.A., Sabena Belgian World Airlines ("Sabena"), and Austrian Airlines, Österreichische **Luftverkehrs** AG ("Austrian ") filed a joint application for approval of and antitrust immunity for three separate and parallel Commercial Cooperation and Marketing Agreements (the "Cooperation Agreements"), between Delta, on the one hand, and each of Austrian, Sabena and Swissair, on the other hand, and a Coordination Agreement

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among the four applicants covering the coordination of the three **Cooperation** Agreements (collectively referred to as the "Alliance Agreements"). The application was filed pursuant to 49 U.S.C. §§ 41308 and 41309.

According to the joint applicants, **the** objective of the Alliance Agreements is to establish legal frameworks that will allow the applicants to cooperate to the extent necessary to create a "**seamless** air transport system," while retaining their separate corporate and national identities. The applicants request that we grant the requested approval and immunity for a five-year term, consistent with the duration of approvals granted earlier by the Department to Northwest Airlines, Inc. and KLM Royal Dutch Airlines. See Orders 93-1-1 1 and 92-1 1-27.

On September 15, 1995, American Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc. and **USAir**, Inc. filed a request for an extension of the period for filing comments to the application for an additional 30 days. <sup>1</sup>

On September 18, 1995, the joint applicants filed an answer in opposition to the request to extend the date for comments.

### **Additional Information Requirements**

In **order** to consider this matter fairly and expeditiously, we require the joint applicants to provide the Department with certain significant and relevant information; specifically, that they:

- Provide all Austrian, Delta, Sabena and **Swissair** corporate documents (in English or with English translations) dated within the last two years that address competition in the U.S.-Austrian/Belgium/Switzerland markets.
- Provide all Austrian, Delta, Sabena and **Swissair** studies, surveys, analyses and reports (ii **English** or with English translations) dated within the last two years which **were** prepared by or **for** any officer(s) or director(s) (or, individual(s) exercising similar functions) for the purpose of evaluating or analyzing the proposed enhanced alliance with respect to market sham, competition, competitors, markets, potential for traffic growth or **expansion into geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document.**
- Describe separately each applicant's strategic objectives in forming the alliance agreements.

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<sup>1</sup> On September 21, 1995, the National Air Carrier Association (**NACA**), on behalf of certain of its **member** carriers, filed in support of the joint motion for an extension of time. On September 22, 1995, the applicants filed a reply opposing **NACA's** position.

- Describe the impact that implementation of the proposed alliance agreements would have on Delta's operating revenue and operating and net profit and loss results.
- Provide forecast information and data concerning any traffic diversion anticipated from U.S. flag carriers should the application be approved.
- Discuss whether and to what extent a grant of the application would or should affect the joint applicants' participation in IATA, especially price coordination.
- Provide Origin & Destination (O&D) traffic for 1994 for Austrian, Sabena and Swissair's top 100 markets that involve a U.S. gateway city as a passenger origin or destination point.
- In addition to the information requested in the immediately preceding item, provide an analysis of the effect on international and U.S. domestic competition of the proposed closer arrangements between the applicants.
- Describe the extent to which airport facilities, including gates and slots, are available to other carriers who want to begin or increase service at Zurich Airport, Geneva Airport, Brussels Airport, and Vienna International Airport.
- Discuss significant service and equipment changes anticipated by the applicants and the integration of Delta's domestic route system with foreign applicants' international route systems.
- Describe any effect of granting the application on Delta's Civil Reserve Air Fleet (CRAF) commitments.<sup>2</sup>
- Discuss any labor issues that may result from the transaction, and whether, how and to what extent employees of the applicant airlines will be integrated. In particular, state whether the transaction or this type of transaction was the subject of recent collective bargaining between Delta and any of its unions and the nature of such discussions. Discuss whether Delta's unionized **employees** adversely affected by the agreements would be compensated or protected by a collective bargaining agreement and whether adversely affected non-unionized employees would be compensated pursuant to separate arrangements.

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<sup>2</sup> An informational copy of the application together with **the** CRAF information should be served on **the** Department of Defense at U.S. **Transom/TCJ5**, Attention: Air Mobility Analysis, 508 Scott Drive, Scott AFB, IL 622255357.

**Accordingly:**

1. We direct Delta Air Lines, Inc., Swissair, Swiss Air Transport Company, Ltd., Sabena S.A., Sabena Belgian World Airlines, and Austrian Airlines, **Österreichische** Luftverkehrs AG to submit the additional information set forth in this order, as a supplement to their joint application;
2. We defer the 21-day deadline for the filing of comments set forth in 14 CFR Part 303 until further notice;
3. We dismiss the request of American Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc. and **USAir**, Inc. for an extension of the period for filing comments as moot;
4. Upon our determination that the joint application is complete, we will establish a procedural schedule for comments and such other responsive pleadings as may be determined necessary to decide this matter fairly and expeditiously; and
5. We shall serve this order on Delta Air Lines, Inc.; Swissair, Swiss Air Transport Company, Ltd.; Sabena S.A., Sabena Belgian World Airlines; Austrian Airlines, **Österreichische Luftverkehrs** AG; the Ambassadors of Austria, Belgium, and Switzerland in Washington, D.C.; the Department of State (Office of Aviation); the Department of Justice (Antitrust Division); the Federal Aviation Administration (AFS-200); the Department of Defense; and all other parties on the service list.

By:

**MARK L. GERCHICK**

Acting Assistant Secretary for Aviation  
and International Affairs

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